

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

JULIE ANN HAMSTEAD,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:18-CV-79
(Honorable Gina M. Groh)**

**WEST VIRGINIA STATE POLICE;
TROOPER D. R. WALKER, in his official capacity;
CITY OF RANSON, WEST VIRGINIA;
SARGEANT KEITH SIGULINSKY, in his official capacity;
CITY OF CHARLES TOWN, WEST VIRGINIA;
MASTER PATROLMAN JASON NEWLIN,
in his official capacity; THE WEST VIRGINIA
DIVISION OF HIGHWAYS; RODNEY D. HEDRICK, SR.,
in his official capacity; KYLE REED KOPPENHAVER,
in his official capacity; A.B., an unknown individual
known as the West Virginia Department of Highways’
“Muscle Man” on the 2016 Ranson-Charles Town
Green Corridor Fairfax Boulevard Project;
JEFFERSON CONTRACTING, INC., a corporation;
JEFFERSON ASPHALT PRODUCTS COMPANY, a corporation;
DALE DEGRAVE; ALLEN SHUTTS; JOHN TIMOTHY MORRIS;
WEST VIRGINIA UNIVERSITY HOSPITALS-EAST, INC., dba
“Jefferson Medical Center”; KELLY HALBERT, RN;
and X, Y, and Z, unknown persons who conspired and/or
aided and abetted in the fabrication of false criminal charges
against Julie Hamstead,**

Defendants.

**DEFENDANTS WEST VIRGINIA STATE POLICE AND TROOPER D. R. WALKER’S
RESPONSE TO PLAINTIFF’S MOTION TO STRIKE MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS FIRST AMENDED COMPLAINT**

In her Motion to Strike Memorandum in Support of Defendant West Virginia State Police and Trooper D.R. Walker’s Motion to Dismiss First Amended Complaint (“Motion to Strike”) (ECF No. 57), Plaintiff Julie Ann Hamstead seeks to prevent this Court from considering the very

witness statements that she refers to in her Amended Complaint, and which form the bases of many of her claims. Well-established law provides, contrary to Mrs. Hamstead's argument, that the Court may consider these documents when deciding Defendants West Virginia State Police and Trooper D.R. Walker's (collectively, the "State Police Defendants") Motion to Dismiss. Yet, even if the Court decides not to consider the exhibits attached to the State Police Defendants' brief, Mrs. Hamstead provides no authority that supports her request to strike the brief in its entirety, especially given that the witness statements at issue are only referred to in relation to two of the nine causes of action asserted against the State Police Defendants. For these reasons, the Court should deny Mrs. Hamstead's motion.

I. RELEVANT PROCEDURAL BACKGROUND

The State Police Defendants attached nine exhibits to their memorandum of law in support of their Motion to Dismiss, all of which Mrs. Hamstead expressly refers to in the Amended Complaint or upon which her claims necessarily rely. These exhibits include four witness statements (Exhibits 1-3, 6; ECF Nos. 43-1 – 3, 6); the criminal complaint in Mrs. Hamstead's underlying arrest and prosecution, including the attached Report of Criminal Investigation (Exhibit 5; ECF No. 43-5); 911 Call Reports (Exhibit 4; ECF No. 43-4); the West Virginia State Police's Report of Response to Resistance or Aggression (Exhibit 7; ECF No. 43-7); the Civil Judgement Orders from Mrs. Hamstead's underlying criminal trial (Exhibit 8; ECF No. 43-8); and the Notice of Appeal of the Magistrate Court verdict to the Circuit Court of Jefferson County (Exhibit 9; ECF No. 43-9).

Mrs. Hamstead appears to take issue with only the four witness statements. Memo. in Supp. of Mot. to Strike 3 (ECF No. 58). Mrs. Hamstead asserts that the State Police Defendants claim in their brief that she has adopted these witness statements "as true." *Id.* at 3-4.

This is not so. The State Police Defendants expressly state in their brief that Mrs. Hamstead "vehemently denies" the truthfulness of the witness statements. Memo. in Supp. of Mot. to

Dismiss Am. Compl. 10 (ECF No. 43). The State Police Defendants merely offer the statements to add more detail to what Mrs. Hamstead expressly alleges in the Amended Complaint. *See Butters v. James Madison Univ.*, 145 F. Supp. 3d 610, 618 (W.D. Va. 2015).¹ Nowhere in the Motion to Strike or supporting memorandum of law does Mrs. Hamstead challenge the authenticity of the exhibits attached to the State Police Defendants' brief; although she disputes the truthfulness of the assertions in the statements, she does not dispute that they are authentic copies of the statements she refers to in the Amended Complaint.

II. ARGUMENT

A. **It Is Proper to Consider Documents Attached to a Motion to Dismiss, Even If the Plaintiff Does Not Attach Those Documents to the Pleading and Even If the Plaintiff Disagrees With the Substance of the Documents.**

Contrary to Mrs. Hamstead's assertion, the State Police Defendants are not attempting to "obtain summary judgment at this initial pleading stage of the proceedings." Mot. to Strike 2. Nor must the Court convert the motion to dismiss into one for summary judgment, as discussed below. Memo. in Supp. of Mot. to Strike 3 (citing *Jeffers v. Wal-Mart Stores, Inc.*, 84 F. Supp. 2d 775 (S.D.W. Va. 2000)).

It is well-established by this Court, other District Courts in this Circuit and elsewhere, and numerous Courts of Appeals, including the Fourth Circuit, that a court may consider documents attached to a motion to dismiss if the plaintiff refers to and relies upon the documents in the complaint and does not challenge their authenticity. *Elliot v. AAA Ins.*, Civil Action No. 5:15CV146, 2016 WL 2766651, at *4-5 (N.D.W. Va. May 12, 2016) (considering settlement agreement plaintiffs repeatedly referred to throughout their complaint in motion to dismiss); *Douglas v. NTI-TSS, Inc.*, 632 F. Supp. 2d 486, 490 n.1 (D. Md. 2009) (considering letter from defendant's counsel referred to in complaint); *Butters*, 145 F. Supp. 3d at 617; *Hinman v. Joyce*,

¹ The State Police Defendants provided citations to the Amended Complaint for each exhibit attached to their brief, showing where Mrs. Hamstead referred to or relied upon the document in her pleading.

201 F. Supp. 3d 1283, 1286 (D. Colo. 2016) (noting that a court may consider documents a defendant attaches to a motion to dismiss if they are (1) mentioned in the complaint, (2) central to the claims at issue, and (3) not challenged as inauthentic); *New Beckley Mining Corp. v. Internat'l Union, United Mine Workers of Am.*, 18 F.3d 1161, 1164 (4th Cir. 1994) (noting that trial court did not err in relying on union constitution in deciding motion to dismiss because union referred to the constitution in the complaint to justify its claim); *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004); *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016); *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384-85 (10th Cir. 1997) (observing that even if a plaintiff does not incorporate a document by reference or attach it to the complaint, but the document is referred to in the complaint and central to the claims, a defendant may submit an authentic copy to the court in a motion to dismiss) (citing cases).

There are several reasons for this rule. If courts could not consider documents referred to in the complaint at the 12(b)(6) stage, a plaintiff with a frivolous claim could survive a motion to dismiss simply by not attaching a dispositive document upon which the plaintiff relies. *GFF Corp.*, 130 F.3d at 1385; *Hinman*, 201 F. Supp. 3d at 1287 n1. Also, conversion of a motion to dismiss into one for summary judgment is designed to prevent surprise to the plaintiff. When a plaintiff refers to a document in the complaint and the document is central to the plaintiff's claim, however, the plaintiff obviously is on notice of its contents and this rationale for conversion to summary judgment no longer exists. *GFF Corp.*, 130 F.3d at 1385; *Am. Chiropractic Ass'n*, 367 F.3d at 234.

Furthermore, even when a plaintiff disagrees in her pleadings as to what is written in the extrinsic document, a court may nevertheless consider the document at the motion to dismiss stage. In *Douglas, supra*, the plaintiff alleged in the complaint that a March 2006 letter from the defendant's counsel advised her that the defendant—a manufacturer of dental mouthguards—had warned her dentist about the dangers associated with the mouthguards because it had provided literature and a videotape along with the mouthguard shipped to the dentist. 632 F. Supp. at 492.

When granting the motion to dismiss, however, the court noted that the letter, which was attached to the motion to dismiss, did *not* make that specific assertion, contrary to the plaintiff's allegations. *Id.* Similarly, using Mrs. Hamstead's libel example (Memo. in Supp. of Mot. to Strike 5), if a plaintiff alleged that a newspaper published an article falsely stating that the plaintiff was a criminal, and the defendant attached to its motion to dismiss the actual article at issue, which clearly did *not* state that the plaintiff was a criminal, surely dismissal would be proper and a court would not be constrained to accept as true the allegations in the complaint, which claimed that the article read otherwise. *See Church of Scientology Int'l v. Time Warner, Inc.*, 806 F. Supp. 1157, 1159 (S.D.N.Y. 1992) (holding that a court may consider the allegedly defamatory article in assessing the sufficiency of a libel complaint).

In addition, when reviewing the sufficiency of a complaint, a court may also consider matters of which a court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). And a court may take judicial notice of judicial proceedings in other courts. *Rosales-Martinez v. Palmer*, 753 F.3d 890, 894 (9th Cir. 2014); *United States ex rel. Osheroff v. Humana, Inc.*, 776 F.3d 805, 811 n.4 (11th Cir. 2015) ("Courts may take judicial notice of publicly filed documents, such as those in state court litigation, at the Rule 12(b)(6) stage.")

In short, Mrs. Hamstead is misguided in her assertions that the Court cannot consider the exhibits attached to the State Police Defendants' memorandum in support of their motion to dismiss.

B. The State Police Defendants' Use of the Exhibits at Issue Was Proper.

In this case, it is proper for the Court to consider the witness statements attached as exhibits to the State Police Defendants' Motion to Dismiss. Mrs. Hamstead expressly refers to the statements in the Amended Complaint; her claims rely upon the statements; and she has not challenged the authenticity of the documents.

A court may consider extrinsic documents attached to a motion to dismiss when three conditions are met: (1) the plaintiff explicitly refers to the document in the complaint; (2) the plaintiff bases at least some of its claims on the document; and (3) the plaintiff does not contest the authenticity of the document. *Am. Chiropractic Ass’n*, 367 F.3d at 234. All three conditions are met here.

Mrs. Hamstead explicitly referred to the witness statements in the Amended Complaint. Am. Compl. ¶¶ 68-71, 81a-h. Contrary to Mrs. Hamstead’s contention in the Motion to Strike, the witness statements do not contradict the allegations in the Amended Complaint, but merely add more detail. *Butters*, 145 F. Supp. 3d at 618.

Furthermore, Mrs. Hamstead relies upon the witness statements to support her “Void Disorderly Conduct and Obstruction Charges,” Aiding and Abetting Malicious Prosecution, Abuse of Process, and Outrage claims against the Defendants, as well as a Civil Conspiracy claim, to the extent one exists. Am. Compl. ¶¶ 48, 81, 83-88, 98-101. That is, Mrs. Hamstead alleges that the various witnesses, by providing purportedly false written statements to Trooper Walker, conspired to bring false charges of destruction of property against Mrs. Hamstead and justify Trooper Walker’s use of force.

Finally, Mrs. Hamstead does not argue in her Motion to Strike that the witness statements are not authentic, even though she disputes the truth of the matters contained therein. The State Police Defendants submit the statements only as proof of what they say, however, not as proof that what they say is true. *Hinman*, 201 F. Supp. 3d at 1287.

Thus, the witness statements meet all the conditions necessary for the Court to consider them in deciding the State Police Defendants’ Motion to Dismiss. Furthermore, as discussed below, the documents are relevant to the State Police Defendants’ defenses to two of Mrs. Hamstead’s claims.

1. The Witness Statements Support the State Police Defendants' Contention That Trooper Walker Had at Least Arguable Probable Cause to Arrest Mrs. Hamstead for Destruction of Property.

The State Police Defendants cite to the witness statements in support of dismissal of only two of Mrs. Hamstead's nine causes of action against them, the first being the malicious prosecution claim. Memo. in Supp. of Mot. to Dismiss 7-11. Contrary to Mrs. Hamstead's contention, the State Police Defendants do *not* use the witness statements to "show that Plaintiff is lying." Memo. in Supp. of Mot. to Strike 5. The witness statements, along with Mrs. Hamstead's own allegations in the Amended Complaint, show that Trooper Walker had at least arguable probable cause to arrest Mrs. Hamstead for destruction of property.

The witness statements show what information Trooper Walker had to form his decision that there was probable cause to charge Mrs. Hamstead with destruction of property. As set forth in the State Police Defendants' brief, if Trooper Walker had arguable probable cause to charge Mrs. Hamstead with destruction of property, he is immune from the malicious prosecution claim.

Whether the assertions in the statements are true or false (as Mrs. Hamstead argues) does not matter in the qualified immunity analysis. What matters is whether Trooper Walker was objectively reasonable in relying upon those statements in determining there was probable cause to charge Mrs. Hamstead with destruction of property. *Hillard v. City of Fairbury*, No. 4:08CV3031, 2010 WL 2978145, at *5 (D. Neb. July 23, 2010) ("[T]he relevant inquiry for qualified immunity purposes is not whether [the witness's] statement was true or false, but whether the facts and circumstances known to [the defendant police officer] were sufficient to warrant a reasonable person to believe that Plaintiff had committed the act [with which he was charged].").

The verbal witness statements provided to Trooper Walker and perpetuated in the written statements, as alleged in the Amended Complaint, gave Trooper Walker ample probable cause to charge Mrs. Hamstead with destruction of property. He was objectively reasonable in relying upon the numerous witness statements, despite Mrs. Hamstead's claim that the Jefferson Asphalt truck

ran into her car. *McKinney v. Richland Cnty. Sheriff's Dept.*, 431 F.3d 415, 418 (4th Cir. 2005) (finding that officer was entitled to qualified immunity because there was probable cause to arrest plaintiff based upon victim's identification of the attacker); *Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002) ("Arguable probable cause does not require an arresting officer to prove every element of a crime or to obtain a confession before making an arrest, which would negate the concept of probable cause and transform arresting officers into prosecutors.") (internal quotation and citation omitted); *Beauchamp v. City of Noblesville, Ind.*, 320 F.3d 733, 743 (7th Cir. 2003) (finding that the complaint of a single witness generally is sufficient to establish probable cause for an arrest, and police are under no constitutional obligation to exclude all suggestions that the witness is lying).

Mrs. Hamstead argues that Trooper Walker "procured" the witness statements, and therefore, the State Police Defendants should not be able to use them to support immunity. Memo. in Supp. of Mot. to Strike 2, 5. This contention is directly at odds with the allegations in the Amended Complaint, however. Mrs. Hamstead alleges that Allen Shutts stated in a 911 call *before* Trooper Walker arrived on the scene that Mrs. Hamstead had run into the Jefferson Asphalt truck. Am. Compl. ¶ 81a; 911 Call Report (ECF No. 43-4). She further alleges that John Morris told Trooper Walker and the other police officers *as the officers approached the witnesses* that she had ran into the Jefferson Asphalt truck. Am. Compl. ¶ 34. Mrs. Hamstead also alleges that immediately thereafter, Defendant Kyle Koppenhaver refused to corroborate her claim that the Jefferson Asphalt truck ran into her car, implying that she was the one who was lying. *Id.* at 38; Memo. in Resp. to Rodney Hedrick's and Div. of Highways' Mot. to Dismiss 8 (ECF No. 62). Finally, Mrs. Hamstead alleges that each witness gave Trooper Walker a verbal statement at the scene of the incident and then "perpetuated" their verbal statements with the purportedly false written statements at issue. Am. Compl. ¶ 81a-e. There are no allegations that any officer requested any witness to provide a false verbal statement. To the contrary, Mrs. Hamstead claims

that the Division of Highways and contractor employees, before her arrest, “frame[d]” her for running into the Jefferson Asphalt truck and “procured” the destruction of property charge. Memo. in Resp. to Rodney Hedrick’s and Div. of Highways’ Mot. to Dismiss 8-9. Thus, according to Mrs. Hamstead’s own specific factual allegations, Trooper Walker did *not* “procure” the witness statements; the statements merely repeat and confirm what he was verbally told both by 911 and the witnesses before he arrived on the scene or immediately upon his arrival. The written witness statements are actually directly in line with the specific factual allegations in the Amended Complaint.

Nevertheless, even should the Court choose to disregard the witness statements, it should still find that Trooper Walker is entitled to qualified immunity from Mrs. Hamstead’s malicious prosecution claim, based solely upon the allegations in the Amended Complaint. Although Mrs. Hamstead claims that the police officers “solicited” false written statements from witnesses on the scene (Am. Compl. ¶ 81h), she provides no support for this allegation. A court’s duty to accept the facts pled in a complaint as true does not require that the court ignore specific factual allegations in favor of general or conclusory allegations. *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1205-06 (11th Cir. 2007). Here, Mrs. Hamstead makes specific factual allegations that Trooper Walker and the other officers were told, without solicitation and even *before* arriving on the scene, that Mrs. Hamstead had ran into the Jefferson Asphalt truck. Am. Compl. ¶¶ 34, 38, 81a-e. These facts, pled in the Amended Complaint and accepted as true, provide sufficient grounds themselves to support arguable probable cause for Mrs. Hamstead’s arrest for destruction of property.

Therefore, the State Police Defendants properly submitted the witness statements to show exactly what Trooper Walker was told, as set forth in the Amended Complaint, not for the truth of what he was told. Still, should the Court disregard the witness statements, the facts pled in the Amended Complaint are sufficient by themselves to establish arguable probable cause for the

destruction of property charge, which entitles Trooper Walker to qualified immunity from Mrs. Hamstead's malicious prosecution cause of action.

2. The Witness Statements Support the State Police Defendants' Contention That Trooper Walker's Use of Force Against Mrs. Hamstead Was Proper.

The second cause of action for which the State Police Defendants cite to the witness statements is the battery claim. The State Police Defendants argue that the witness statements show that Trooper Walker used reasonable force in effecting Mrs. Hamstead's arrest and therefore, there can be no battery claim against him. Memo. in Supp. of Mot. to Dismiss 16-17. Use of the witness statements to support the State Police Defendants' arguments in regard to this claim is also proper.

The witness statements corroborate and expand on Mrs. Hamstead's own bare factual allegations of Trooper Walker's arrest of her. It is clear from the allegations in the Amended Complaint and the additional detail provided by the witness statements explicitly referred to therein that Trooper Walker used only the force necessary to apprehend Mrs. Hamstead, causing her only *de minimis* injury. Therefore, Trooper Walker, as a police officer making a lawful arrest, was privileged to use force, and there can be no battery charge based upon the arrest.

The witness statements attached to the State Police Defendants' brief do not contradict the allegations in the Amended Complaint; they merely provide additional detail that, in fact, corroborates Mrs. Hamstead's factual allegations. According to all witnesses—including Mrs. Hamstead herself—Mrs. Hamstead moved towards the Division of Highway and contractor employees while they were being interviewed by Officer Newlin and Sgt. Sigulinsky; Trooper Walker took Mrs. Hamstead's arm; he pinned her against the Jefferson Asphalt truck, then took her to the ground; and after Mrs. Hamstead was on the ground, Trooper Walker was able to handcuff her. *Compare* Am. Compl. ¶ 42 with Hedrick Stmt. (ECF No. 43-1), Koppenhaver Stmt. (ECF No. 43-2), Sigulinsky Stmt. (ECF No. 43-3), and Newlin Stmt. (ECF No. 43-6).

The witness statements, however, add the additional detail omitted from the Amended Complaint—that Mrs. Hamstead was actively resisting arrest from the time Trooper Walker first took her hand until the time he was able to handcuff her. Nowhere in the Amended Complaint, however, does Mrs. Hamstead allege that she was *not* resisting arrest. Thus, the witness statements do not contradict Mrs. Hamstead’s specific factual allegations but merely describe the incident in more detail. *See Butters*, 145 F. Supp. 3d at 618.

As with the malicious prosecution claim, even if the Court decides to disregard the witness statements in deciding the Motion to Dismiss, there is no need to strike the State Police Defendants’ entire brief, as the allegations in the Amended Complaint themselves show that Trooper Walker made a lawful arrest of Mrs. Hamstead and did not use excessive force.

Mrs. Hamstead is guilty of disorderly conduct and obstructing an officer. The Jefferson County Magistrate Court found Mrs. Hamstead guilty of these two charges after a ten-hour trial. Am. Compl. ¶¶ 77, 83-84 (noting that the disorderly conduct and obstructing an officer charges are still pending after the Magistrate Court trial); Criminal Judgment Orders (ECF No. 43-8); Notice of Appeal (ECF No. 43-9); Memo. in Resp. to Rodney Hedrick’s and Div. of Highways’ Mot. to Dismiss 13 (noting that Mrs. Hamstead suffered a “conviction” and is still subject to an “ongoing prosecution”). Thus, even discounting the destruction of property charge, Mrs. Hamstead was subject to a lawful arrest. Additionally, Mrs. Hamstead only suffered an abrasion to her knee and a “possible” muscle tear to her left arm. Am. Compl. ¶¶ 42, 56. The Fourth Circuit has recognized that an efficient, lawful arrest of a resisting suspect that causes only *de minimis* injury does not amount to excessive force necessary to support a battery claim against the arresting officer. *Pegg v. Herrnberger*, 845 F.3d 112, 120 (4th Cir. 2017). Indeed, in *Pegg*, the facts were virtually indistinguishable from those here: the arresting officer grabbed the plaintiff’s arm, pushed him against a truck, and took him to the ground and handcuffed him; as a result, the plaintiff suffered minor scrapes and abrasions. *Id.* at 116.

The witness statements at issue here do not contradict, and in fact corroborate, Mrs. Hamstead's own allegations in the Amended Complaint. Whether the Court considers those statements or not, however, there are simply no factual allegations that Trooper Walker used excessive force in arresting Mrs. Hamstead. Therefore, he is not subject to a battery claim based upon that lawful arrest.

C. Mrs. Hamstead Offers No Authority Permitting the Court to Strike the State Police Defendants' Supporting Memorandum.

As previously discussed, it is proper for the Court to consider the witness statements submitted in support of the State Police Defendant's Motion to Dismiss, and even if the Court does not consider those statements, dismissal of all of Mrs. Hamstead's claims against the State Police Defendants is proper. Mrs. Hamstead, however, seeks the extraordinary relief of having the State Police Defendants' entire brief stricken. Yet, she offers not a shred of authority to support the relief she seeks from the Court.

There is no authority that supports striking an entire brief, even if the Court finds that consideration of documents attached to the brief is improper. Mrs. Hamstead claims that Rule 12(f) of the Federal Rules of Civil Procedure supports her Motion. Mot. to Strike 1. Rule 12(f), however, only contemplates a court striking "an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter" from a pleading, not the entire pleading itself. Fed. R. Civ. P. 12(f). Furthermore, the rule only applies to a "pleading," not a memorandum of law. *Id.* A memorandum of law is not a "pleading" to which the rule applies. Fed. R. Civ. P. 7(a) (setting forth pleadings allowed under the rules).

It would be especially improper to strike the State Police Defendants' entire brief in this case because the witness statements with which Mrs. Hamstead takes offense are only referred to in connection with the arguments relating to two causes of action. The State Police Defendants discern nine causes of action directed towards them in the Amended Complaint: (1) Malicious

Prosecution; (2) “Void Disorderly Conduct and Obstruction Charges”; (3) Abuse of Process; (4) Battery; (5) Negligence; (6) Negligent or Intentional Infliction of Emotional Distress/Tort of Outrage; (7) Respondeat Superior; (8) Negligent Hiring, Training, and Supervision; and (9) “Obstruction of Justice.” Am. Compl. 22-28. The State Police Defendants only rely upon the witness statements in their arguments for dismissal of the malicious prosecution and battery claims. Memo. in Supp. of Mot. to Dismiss 7-11, 16-17. The statements are not mentioned at all in relation to the other seven counts, and in particular, are not mentioned at all in the arguments on behalf of the State Police.

Instead, should the Court agree with Mrs. Hamstead that any exhibits attached to the State Police Defendants’ brief are improper to consider at the Rule 12(b)(6) stage, the Court can either convert the motion to dismiss into one for summary judgment or simply disregard the improper exhibits. *Pevia v. Shearin*, Civil Action No. ELH-13-2912, 2015 WL 629001, at *3 (D. Md. Feb. 10, 2015) (“A district judge has ‘complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not consider it.’”) (citing 5C Wright & Miller, *Federal Practice & Procedure* § 1366 (3d ed. 2004, 2011 Supp.)); *Liberty Mut. Fire Ins. Co. v. E.E. Cruz & Co., Inc.*, 475 F. Supp. 2d 400, 404-05 (S.D.N.Y. 2007) (when a party submits evidence in connection with a motion to dismiss beyond the scope permitted at the 12(b)(6) stage, the court has discretion to either exclude the prohibited material or convert the motion to one for summary judgment).

As argued in Sections A and B above, it is clearly established that the Court may consider documents attached to a motion to dismiss without converting the motion into one for summary judgment, so long as Plaintiff refers to the documents in her pleading, relies upon the documents, and does not contest their authenticity. Nevertheless, even if the Court decides that any of the documents attached to the State Police Defendants’ brief do not meet the criteria for consideration

at the 12(b)(6) stage, the proper remedy is for the Court to either disregard the document or convert the motion into one for summary judgment, not to strike the entire brief.

III. CONCLUSION

In her Motion to Strike, Mrs. Hamstead mischaracterizes the purpose for which the witness statements she objects to were submitted and seeks relief that is unavailable. The State Police Defendants properly submitted in support of their Motion to Dismiss documents that Mrs. Hamstead expressly referred to in her pleading and upon which her claims necessarily rely. While Mrs. Hamstead disputes the truthfulness of the statements made in the documents, she does not question the authenticity of the documents themselves. Therefore, the Court should consider the witness statements submitted with the State Police Defendants' memorandum in support of their Motion to Dismiss.

WHEREFORE, for the forgoing reasons, Defendants West Virginia State Police and Trooper D.R. Walker respectfully request that the Court DENY Plaintiff Julie Ann Hamstead's Motion to Strike Memorandum in Support of Defendants West Virginia State Police and Trooper D.R. Walker's Motion to Dismiss First Amended Complaint and grant them all other relief the Court deems proper.

Dated this 13th day of July 2018.

Respectfully submitted,

/s/ Mark G. Jeffries

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

JULIE ANN HAMSTEAD,

Plaintiff,

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(Honorable Gina M. Groh)**

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and X, Y, and Z, unknown persons who conspired and/or
aided and abetted in the fabrication of false criminal charges
against Julie Hamstead,**

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July 2018, I filed the foregoing “*Defendants West Virginia State Police and Trooper D. R. Walker’s Response to Plaintiff’s Motion to Strike Memorandum in Support of Motion to Dismiss First Amended Complaint*” with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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